STATE OF MICHIGAN

COURT OF APPEALS

In re SUTTER ESTATE.

ROBERT JAMES, as Personal Representative of the ESTATE OF GLENN A. SUTTER,

Plaintiff/Counter-Defendant-Appellee,

v

ESTATE OF HILDA GALE,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
January 11, 2011

No. 294855
Oceana Probate Court
LC No. 06-000061-CZ

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right from the probate court's order granting plaintiff's motion for summary disposition and concluding that defendant had no interest in the real property here at issue ("the property"). For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In 1890, Willibald and Walburga Lederele, husband and wife, took title to the property. They had four children who survived to adulthood: Rudolph, Arnulph, Constantina (who became Constantina Sutter), and Hilda (who became Hilda Gale). Willibald died some time before September 17, 1923. On March 10, 1923, Rudolph conveyed his interest in the property to his brother Arnulph; on June 22, 1923, Arnulph conveyed his interest in the property by quitclaim deed to his mother Walburga; and on September 17, 1923, Walburga deeded the property to Constantina. These deeds were all recorded on September 18, 1923. At issue is the language of the 1923 deed to Constantina. The deed, "between Walburga [sic] Lederle . . . and Constantina Lederle, daughter of [Walburga]," purported to "grant, bargain, sell, remise, release, alien and confirm" to Constantina the property described:

> The Northeast quarter of the South west quarter; The East fourteen acres of the Northwest quarter of the South West; The West half of the South East quarter of the South west quarter;

> Also Commencing fifty two (52) rods east of the South West corner of Section twenty eight, thence east twenty eight rods, thence north eighty rods, thence west twenty rods, thence north eighty rods, thence west eight rods, thence south one hundred sixty rods, to the point of beginning: all being in section 28, in town 14 north, Range 18 West, and containing 88 acres of land, more or less; excepting only the undivided share there in of Hilda Gale, a Minor, now aged 19 years, and one of the four heirs-at-law of Willibald Lederle, Deceased, who in his life time was the husband of the said party of the first part [i.e., Walburga.]

There is no evidence Rudolph, Arnulph, Constantina, or Hilda ever had a legal interest in the property until the September 17, 1923, deed from Walburga to Constantina. Nor is there any evidence that Hilda or her descendants ever lived on the land or were prevented from entering the land. In short, the only relevant evidence of record in this case is the deed itself.

When contesting in the probate court plaintiff's motion for summary disposition and claim to all the property described in the deed, defendant took the position that the language "excepting only the undivided share there in of Hilda Gale" served as an affirmative conveyance to her: a "reservation" of a property interest in her favor, rather than an "exception." Thus, defendant argued, Hilda Gale and Constantina Sutter were intended to be equal tenants in common in the property. After hearing arguments, the probate court issued a written opinion, finding for plaintiff. The court found that the language granting to Constantina, "grant, bargain, sell, remise, release, alien and confirm," was proper at the time of the deed to convey fee simple. The court noted that Constantina was the only identified grantee; Hilda Gale was not named as a grantee. The court concluded that the deed was unambiguous, did not convey anything to Hilda Gale, and did not except any interest of hers because she did not have an existing interest. The exception was "simply a recital without substance."

In this Court, defendant again argues that the deed clearly expresses the intent of the grantor that Hilda receive an undivided share, equal to Constantina's, in the property. Defendant further argues that even if the deed conveyed nothing, Walburga retained an interest through operation of the deed, and that interest passed through intestate succession to Hilda and her heirs.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

A suit to quiet title is an equitable action. *Special Property VI, LLC v New Century Mortgage Corp*, 273 Mich App 586, 590; 730 NW2d 753 (2007). "When reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

We hold that the probate court did not err in quieting title in plaintiff only. The only evidence of what was intended is the deed itself. Everything else is speculation. Defendant correctly states that the words "excepting" and "reserving" have been used interchangeably and care must be taken in analyzing the intent of the drafter. *Choals v Plummer*, 353 Mich 64, 69; 90 NW2d 851 (1958). But that rule does not here help defendant. "[A] reservation vests full title in the property to the grantee, while the grantor retains some specific right." *Bolio v Marvin*, 130 Mich 82, 83-84; 89 NW 563 (1902). "An attempted reservation for the benefit of a stranger to the conveyance is ineffective." *Choals*, 353 Mich at 71. However, a grantor may create an exception in favor of a third party. *Mott v Stanlake*, 63 Mich App 440, 442; 234 NW2d 667 (1975), citing *Martin v Cook*, 102 Mich 267; 60 NW 679 (1894). Thus, if the language is reservation, it did not convey anything to Hilda Gale, but conveyed *full title* to Constantina, reserving "the undivided share . . . of Hilda Gale" for the benefit of Walburga. However, whatever that "undivided share" might be, it would not be title. However, an exception could be used to convey an interest to Hilda Gale. But this exception did not convey an interest in land to Hilda Gale. The wording is clear that what was being excepted was not something *for* Hilda, but something *of* her: i.e., an interest the grantor thought she already had. Nonetheless, Hilda had not been and never was granted anything, nor had she inherited any interest at the time of the 1923 deed. As plaintiff argues and the probate court found, the interest held back from the deed by exception was nonexistent. Therefore, nothing was held back, and the deed conveyed all the property to plaintiff.

Nor did defendant receive an interest in the property through intestate succession. For the reasons given above, whether the deed is read to be reserving a purported interest or excepting a purported interest, the interest allegedly retained by Walburga did not exist. The probate court did not err in finding the "excepting" language of the deed to have no legal significance. Title was granted in fee simple to all the property to Constantina. Consequently, we affirm the trial court.

Affirmed. Plaintiff, being the prevailing party in a civil case is entitled to costs. MCR7.219(A).

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello